



**Issue Date: 11 June 2010**

BALCA Case Nos.: 2010-TLN-62  
ETA Case Nos.: C-10102-49856

*In the Matter of:*

**CHATEAU ON THE LAKE,**  
*Employer*

Certifying Officer: William L. Carlson  
Chicago National Processing Center

Before: **WILLIAM S. COLWELL**  
Associate Chief Administrative Law Judge

**DECISION AND ORDER AFFIRMING DENIAL OF  
CERTIFICATION**

This case arises from a request for review of a United States Department of Labor Certifying Officer's ("the CO") denial of an application for temporary alien labor certification under the H-2B non-immigrant program. The H-2B program permits employers to hire foreign workers to perform temporary nonagricultural work within the United States on a one-time occurrence, seasonal, peakload, or intermittent basis. *See* 8 U.S.C. § 1101(a)(15)(H)(ii)(b); 8 C.F.R. § 214.2(h)(6); 20 C.F.R. Part 655, Subpart A (2009).

**Statement of the Case**

On April 12, 2010, the Department of Labor's Employment and Training Administration ("ETA") received applications for temporary labor certification from Chateau on the Lake ("the Employer") requesting certification for 15 housekeepers from April 1, 2010, until November 30, 2010. AF 80-104<sup>1</sup>.

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<sup>1</sup>Abbreviations to the 104-page appeal file will be designated "AF" followed by the page number.

On April 14, 2010, the CO issued a *Request for Further Information* (“RFI”) citing multiple deficiencies, only one of which is relevant to this appeal. AF 73-79. The CO found the Employer failed to comply with pre-filing recruitment. AF 74. The CO requested that the Employer submit a job order that included information about “whether or not overtime will be available” pursuant to 20 C.F.R. §§ 655.15(e)(2) and 655.15(f)(3). *Id.*

On April 21, 2010, the Employer submitted a response to the RFI. AF 42-72. Relevant for the present purposes, the Employer submitted its job order with the local state workforce agency (“SWA”). AF 63-64. The job order noted that the pay for the position was \$8.50 per hour and the hours of employment were from 7 a.m. to 3:30 p.m. *Id.* However, the job order did not mention whether overtime would be available. *Id.*

On May 13, 2010, the CO issued a *Final Determination* denying the Employer’s application. AF 37-41. Citing to 20 C.F.R. §§ 655.15(e)(2) and 655.15(f)(3), the CO found that the Employer failed to indicate in the job order with the SWA that overtime might be available, despite listing overtime as a possibility in both the application and the newspaper advertisements. AF 41. As a result, the CO found that “by omitting this required information from its job order, the employer has failed to comply with required pre-filing recruitment.” *Id.* The CO denied certification based on the Employer’s failure to comply with recruitment requirements at 20 C.F.R. § 655.15. The Employer’s appeal followed.

### **Discussion**

When conducting domestic recruitment under the H-2B program, the job order<sup>2</sup> must contain, *inter alia*, “[t]he work hours and days, expected start and end dates of employment, and whether or not overtime will be available.” 20 C.F.R. §§ 655.15(e)(2) and 655.17(f). These recruitment requirements are “designed to reflect what the Department has determined, based on program experience, are most appropriate to test the labor market.” *See* 73 Fed. Reg. 78,020, 78,031 (Dec. 19, 2008). Since the Employer failed to comply with the advertising requirements, the CO properly denied certification.

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<sup>2</sup> Job orders must comply with the same requirements as newspaper advertisements pursuant to 20 C.F.R. § 655.15(e)(2).

In its requests for review, the Employer stated that “when filing an H-2B job order on the Missouri Career Source website[,] there is no place to indicate whether overtime is available.” AF 1. The Employer further asserted that “no U.S. applicants rejected the job because of this overtime issue[,] and no U.S. applicants were rejected because of this overtime issue.” *Id.* Ultimately, the Employer argued that the omission “had no effect on recruitment.” *Id.*

Job orders, like newspaper advertisements, must comply with the recruitment requirements found at § 655.17 in order to adequately test the domestic labor market. By omitting one of these requirements, the Employer did not conduct a proper test of the labor market to determine if labor certification was required. While the Employer may conclude that the omission “had no effect on recruitment,” the Department has determined that these steps are necessary in order to protect domestic workers. Since the Employer did not comply with the Department’s advertising requirements, I affirm the CO’s denial.

### **Order**

For the foregoing reasons, it is hereby **ORDERED** that the Certifying Officer’s decisions are **AFFIRMED**.

For the Board:

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**WILLIAM S. COLWELL**  
Associate Chief Administrative Law Judge